

## **REMARKS**

The Applicants respectfully request reconsideration in view of the following remarks and amendments. Claims 1-20 have been amended. Claims 21 and 22 have been cancelled. No claims have been added. Accordingly, claims 1-20 are pending in the Application.

### **I. Election/Restrictions**

In response to the Examiner's request for election of claims, the Applicants elect the claims of Group 1 including claims 1-20 without traverse. Accordingly, claims 21 and 22 have been cancelled.

### **II. Double Patenting**

Claims 1-22 are provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-22 of co-pending Application No. 10/581,439.

A corrected, verified translation of the specification for co-pending application 10/581,439 (corresponding to WO2005/056406) will be filed with the co-pending application along with new claims. The Applicants submit that when the corrected, verified translation of the specification is filed, co-pending application 10/581,439 will no longer claim the same invention as that of the present application. Accordingly, the Applicants respectfully request the provisional rejection of the claims be withdrawn upon the filing of the corrected, verified translation of the specification for co-pending application 10/581,439.

### **III. Claim Rejections – 35 U.S.C. §112**

Claims 1-3 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention.

Claim 1 stands rejected because “the bag body” and “the fold line” as recited in this claim allegedly lack antecedent basis. In response, the Applicants have amended claim 1 to recite that “the body bag includes at least one flap and a bag body, said flap being folded back...” and “a fold line” respectively. As amended, the Applicants submit that claim 1 is no longer indefinite.

Claim 2 stands rejected because the phrase “the whole body of a bag” as recited in this claim allegedly lacks antecedent basis. In response, the Applicants have amended claim 2 to recite “the whole of the body bag.” As amended, the Applicants submit that claim 2 is no longer indefinite.

Claim 3 stands rejected because the phrase “the body bag” as recited in this claim allegedly lacks antecedent basis. In response, the Applicants submit that the amendments to claim 2 discussed above provides sufficient antecedent basis for this phrase. Based on the amendment to claim 2, the Applicants submit that claim 3 is no longer indefinite.

Based on the amendments and remarks presented above, the Applicants submit that claims 1-3 are now definite in compliance with 35 U.S.C. §112, second paragraph. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-3 on this basis.

#### **IV. Claim Objections**

Claim 2 stands objected to for informalities. In response, the Applicants have amended claim 2 to recite “the whole of the body bag” as noted above in the Applicants’ discussion of the 35 U.S.C. § 112, second paragraph rejections. As amended, the Applicants submit that claim 2 no longer contains informalities. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the objection to claim 2.

Claim 3 stands objected to for informalities. In response, the Applicants have amended claim 3 to replace “elements respective” with “elements respectively” as suggested by the Examiner. As amended, the Applicants submit that claim 3 no longer contains informalities. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the objection to claim 3.

Claims 4-20 are objected to under 37 CFR 1.75(c) as being in improper form, because a multiple dependent claim cannot depend from another multiple dependent claim. In response, the Applicants have amended the claims to remove all multiple dependencies. Thus, the pending claims no longer include any multiple dependent claims because there are no multiple dependencies. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the objection to claims 4-20.

## **V. Additional Amendments to the Claims**

The Applicants submit additional amendments to the claims. Specifically, each instance of the term “gusset” was replaced with “flap” in the pending set of claims. “Gusset” is a translation of the French term “soufflet”, used in the original claims of the French priority document. However, “flap” is a more suitable translation of the word “soufflet.” This amendment is supported, for example, by page 5, lines 6-10 of the specification which clearly defines “gusset” as being part of a bag which is folded (i.e. a flap). Furthermore, page 1, lines 10-16 of the specification refers to European Patent No. 1 321 381, which uses the term “flap” rather than “gusset” for the description of an equivalent part of the bag. Thus, the Applicants submit that these amendments which replace “gusset” with “flap” do not add new subject matter to the application. Accordingly, the Applicants respectively request entry of these amendments to the claims.

## **VI. Claim Rejections – 35 U.S.C. §103**

Claims 1-3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0114838 filed by McGregor (“McGregor”) in view of European Patent No. 1321381 issued to Zimmer (“Zimmer”).

To determine obviousness of a claim: (1) factual findings must be made under the factors set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966); and (2) the analysis supporting the rejection under 35 U.S.C. § 103 should be made explicit and there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See MPEP §§ 2141(II), 2141(III), and 2142; KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396; see e.g., MPEP § 2143 (providing a number of rationales which are consistent with the proper “functional approach” to the determination of obviousness as laid down in Graham).

In regard to the rejection of claim 1, this claim has been amended to recite “A packaging bag that includes at least one flap...folded back against a face of the bag body and held in this position by a detachable connecting element... a re-closeable opening which extends across a fold line (22) of the flap and covers the full width of the flap and at least a substantial part of the

bag body.” The Applicants submit that these amendments do not add new subject matter to the Application. Further, the combination of McGregor and Zimmer fails to teach or suggest these elements of amended claim 1.

McGregor discloses a bag including an access opening and a re-closeable device located longitudinally (vertically) and optionally at the junction corner of an end panel and a side panel. However, McGregor fails to disclose that the bag comprises at least one flap folded back against the face of the bag body and held in this position by a detachable connecting element; and the re-closeable opening extends across the fold line of the flap and covers full width of the flap and at least a substantial part of the bag body as recited in amended claim 1.

The re-closeable opening of McGregor is designed to automatically open wide under inner tension caused by the filling of the bag. This automatic opening enables easy access to the contents of the bag. See McGregor, Paragraph [0072]. For example, in order to use such an opening as a pouring spout, McGregor suggests pulling the top of the bag upward to create a slit. Consequently, part of the top end of the bag has to be kept closed.

In addition, the portion between the fold line and the seal 29 is actually neither a gusset, nor a flap as recited in amended claim 1, but instead merely constitutes the sealed end of the bag. See McGregor, Reference 13. The fold line of McGregor is thus precisely located at the bottom of the seal.

Further, reference 45 of Figures 7-9 of McGregor effectively points to a gusset. However, this gusset is not a flap and is not provided with a re-closeable opening that extends across its fold line and covers its full width.

Further, Zimmer fails to cure the deficiencies of McGregor. Zimmer, which is already described in the current patent application, discloses a bag suitable for multiple openings and closures. The bag of Zimmer includes a flap which is folded back onto itself and is held in this position by a detachable element and a second element providing for a transverse re-closeable opening.

However, the bag of amended claim 1 further comprises a re-closeable opening that extends across the fold line of the flaps and covers the full width of the flap and at least a substantial part of the bag body. Zimmer fails to disclose these elements of amended claim 1. Thus, Zimmer fails to cure the deficiencies of McGregor.

In view of the above amendments and remarks, the cited references fail to disclose a bag comprising a re-closeable opening that extends across the fold line of the flap and covers the full width of the flap and at least a substantial part of the bag body.

Based on the recited structure, the bag of claim 1 can receive contents that are packed under high pressure, such as baby nappies or equivalents, while still allowing easy access to the contents after removing a first article from the bag.

The bag of amended claim 1 compensates for the pressure variation caused by a first opening of the bag by deploying the flap thereby enabling the contents of the bag to expand into the inner volume of the bag instead of pouring out of the bag through the first opening. Further, the precise position of the re-closeable elements across the full width of the fold line of the flap enables unlimited access to any product contained in the bag, as the flanges of the flap can be separated to facilitate this access.

In contrast, the bag of McGregor is designed to naturally open due to the inner pressure caused by the contents of the bag and thereby allow part of the contents of the bag to flow out. Thus, the addition of a flap to the bag of McGregor would be contrary to the intended purpose disclosed by McGregor because it would partially prevent the contents of the bag from flowing out. Further, if the bag of McGregor included a re-closeable opening that extended across the fold line of the top seal 13 and covered its full width, the modified bag of McGregor could be opened by a user through the seal and the seal would not be re-closable. This is fully inconsistent with another intended purpose of the bag of McGregor which is to provide a secure re-closable seal.

Therefore, a person of ordinary skill in the art would not modify the bag of McGregor to add a flap or to include a re-closeable opening that extended across the fold line of the top seal 13 and covered its full width because modifying the bag of McGregor in this fashion would be contrary to the intended purpose of the bag of McGregor. For similar reasons, the combination of McGregor and Zimmer is not consistent with intended purpose of McGregor.

Furthermore, McGregor teaches away from providing a bag with a re-closeable opening that extends across the fold line of the flap and covers the full width of the flap and at least a substantial part of the bag body.

In paragraph [0077], McGregor indicates that the use of a longitudinal re-closeable element rather than a transverse seal reduces headspace in the top of the package and decreases costs and package size. Thus, a person of ordinary skill in the art would therefore not have provided the bag of McGregor with additional headspace in the top of the package by providing a bag with a re-closeable opening that extends across the fold line of the flap and covers the full width of the flap and at least a substantial part of the bag body as recited in amended claim 1.

In paragraph [0016], McGregor indicates that an objective of its invention is to prevent channel leakage from occurring by providing a bag with an access opening “spaced below the top of the bag.” This passage of McGregor thus further suggests to a person of ordinary skill in the art to not use a re-closeable opening that extends across the whole width of the flap as this would potentially cause channel leakage.

Even if a person of ordinary skill in the art had provided the bag of McGregor with the flap of Zimmer, he would have obtained one of the following two hybrid bags:

1. a bag comprising a re-closeable element that extends longitudinally along the body of the bag, but stops at the fold line to prevent channel leakage and a transverse seal at the top end of the flap; or
2. a bag comprising the longitudinal re-closeable opening disclosed in McGregor only.

However, both of these hybrid bags fail to disclose each element of amended claim 1. Therefore, as none of the cited references suggest a re-closeable opening extending beyond a fold line, a person of ordinary skill in the art would not have obtained a bag as recited in amended claim 1.

Thus, the combination of McGregor and Zimmer fails to teach or suggest each element of amended claim 1. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1.

In regard to claims 2-20, these claims depend from independent claim 1 and incorporate the limitations thereof. As discussed above, the combination of McGregor and Zimmer does not disclose all the limitations of amended claim 1 which are incorporated in claims 2-20. Thus, the combination of McGregor and Zimmer does not teach or suggest each element of claims 2-20. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of claims 2-20 on this basis.

### **CONCLUSION**

In view of the foregoing, it is believed that all claims now pending are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

### **PETITION FOR EXTENSION OF TIME**

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on April 28, 2009, Applicant respectfully petitions Commissioner for a one (1) month extension of time, extending the period for response to August 28, 2009. The amount of \$130.00 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(1) large entity will be charged to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated: August 28, 2009

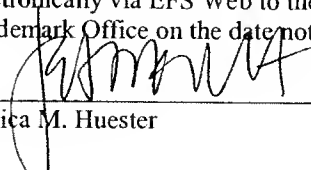
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#### **CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date noted below.

  
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